the nature of the charges themselves. In both the charges the appellant was charged "jointly" in possession of these articles with another person, Wong Ah Yong. According to the records of the learned Special President, Wong Ah Yong was the first accused who claimed trial to both charges. The appellant was the second accused. Since it was also an essential ingredient of the offence that joint possession must be proved the fact that the appellant had pleaded guilty whereas the co-accused claimed trial to both the charges created then an awkward situation. Possession consists of physical control over a thing coupled with an intention to exclude all others from this control. The situation was such that when the learned Special President accepted the plea of guilty of the appellant the co-accused in fact disputed joint possession.

Having regard to all the circumstances of this case I decided to exercise my revisionary powers under section 325 of the Criminal Procedure Code (F.M.S. Cap. 6) on the following grounds:—

(1) The first charge deals with unlawful possession of firearms, to wit, one STAR 9 mm/38 Pistol No. 4464880 and one grenade, without a licence granted under section 4 of the Arms Act, 1960 punishable under section 8 of the Firearms (Increased Penalties) Act, 1971. It is to be noted that section 4 of the Arms Act, 1960 deals only with the grant and renewal of licences and permits for "arms". It is therefore a procedural section. Section 8 of the Firearms (Increased Penalties) Act, 1971 itself creates an offence for any person to be in unlawful possession of a "firearm" and the punishment for the offence shall be imprisonment for a term which may extend to fourteen years and with whipping with not less than six strokes. It is not as the prosecution contended that the offence is under the 1960 Act and only the punishment is under the 1971 Act. The word "firearm" is used in the first charge itself which is the word used to create the offence under section 8 of the 1971 Act. The word "firearm" is also defined in section 2 of the 1971 Act to mean "any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged by means of an explosive charge, and includes a bomb or grenade containing an explosive charge." The word "discharge" is also defined in that Act. The Firearms (Increased Penalties) Act, 1971 is certainly a penal Act and therefore section 8 must be strictly construed and must be read in conjunction with the definition of section 2 of the Act. Therefore for an offence to be created under section 8 of that Act it must be shown that the firearm concerned is *capable* of discharging any shot, bullet or other missile by means of an explosive charge which simply means that the firearm is in a serviceable condition. The fact that an accused pleads guilty to a charge under section 8 of that Act does not, in my view, absolve the prosecution from showing that the firearm concerned is in a serviceable condition. It may be sufficient to have a bare statement to that effect in the brief facts of the case following the plea of guilty but it is most desirable that this bare statement can be supported by a report of an expert who has tested the firearm in question. It may of course not be necessary, where an accused pleads guilty, to also tender this report.

(2) Both the charges dealt with joint possession. In such a case as this where one of the accused persons pleads guilty to the offence whereas the other claims trial it is not desirable, in my view, to consider the plea of guilty until after the trial of the other person. An awkward situation will arise if the other person is acquitted of the charge or charges and therefore the element of joint possession will no longer be obtained to constitute the offence against the accused. By not accepting the plea at that stage will also enable the prosecution to consider amending the charge at a later stage after the facts have come out more clearly after the trial of the other accused.

For the above reasons I ordered that the conviction on both charges against the appellant be quashed and there should be a retrial.

Conviction quashed. Retrial ordered.

Solicitors: *S. Seenivasagam & Co.*

CREDIT CORPORATION (M) BHD. v. THE MALAYSIA INDUSTRIAL FINANCE CORPN. & ANOR.

[O.C.J. (Abdul Hamid J.) June 9, 1975]
[Kuala Lumpur — Civil Suit No. 376 of 1974]

Hire Purchase — Ownership of chattel under hire purchase agreement — Transfer by hirer — Sale of Goods Ordinance, 1957 ss. 29 and 30(2) — Contracts (Malay States) Ordinance, 1950, s. 19 — Hire Purchase Act, 1967, ss 4 & 13.

The plaintiffs purchased a car and entered into a hire purchase agreement with a hirer. The car was registered in the name of the hirer with the plaintiffs' claim for ownership indorsed on the register and the registration card. The first defendant purchased the car from a third party and entered into a hire purchase agreement with the second defendant. After terminating the hire, the plaintiffs repossessed the car. The plaintiffs thereupon sought a declaration that they were the owners of the car. The defendants counterclaimed for trespass, conversion and wrongful detention and damages.

Held: (1) upon the true construction of the plaintiffs' agreement which was of a type to which the Hire Purchase Act applied, until the hirer had exercised his option to purchase the car by paying the total rentals and fulfilling all his obligations under the agreement, no property in the car passed to the hirer;

(2) even though the hirer was the registered owner of the car he was only in law the person who had possession and use of the car and this fact did not necessarily make him the legal owner of the car;

(3) in the circumstances the plaintiffs' claim must succeed and an order made declaring that the car was the property of the plaintiffs.

Cases referred to:-

(1) *Lee* v. *Butler* [1893] 2 Q.B. 318.
(2) *Helby* v. *Matthews* [1895] A.C. 471.
(3) *United Engineers (Malaysia) Ltd.* v. *Lai Ping Yoon* [1968] 1 M.L.J. 189.
(4) *Central Newbury Car Auctions Ltd.* v. *Unity Finance Ltd.* [1957] 1 Q.B. 371.

CIVIL SUIT.

Chen Kah Leng (Miss) for the plaintiffs.

S. Narayanan for the first and second defendants.

Abdul Hamid J.: The plaintiffs, Credit Corporation (M) Berhad, a finance company, are asking for a declaration that motor-car bearing chasis number KE11-805076, engine number 3K-5106032 and registration number JJ4733 is its property (I shall call "the said car").

It is not in dispute that the plaintiffs purchased the said car, a new Toyota Corolla from Borneo Motors (M) Sendirian Berhad on March 20, 1971.

On March 31, 1971 the plaintiffs entered into a hire-purchase agreement (I shall call "the plaintiffs' agreement") with one Soo Peng Kun of Jalan Kempas, Batu Pahat Garden, Batu Pahat, Johor (I shall call "the hirer") letting on hire the said car to the hirer for a total sum of $8,634 payable by a deposit of $1,759 and the balance by 30 monthly hire rentals commencing on April 30, 1971.

The said car was registered with the Registrar and Inspector of Motor Vehicles, Muar, in the name of the hirer with the plaintiffs' claim to the ownership endorsed on the Register and the registration card of the said car.

It was agreed between the plaintiffs and the hirer *inter alia* —

(i) that he would not part with personal possession or control of the said car without the prior consent of the plaintiffs;

(ii) that he would not unlawfully sell, dispose of or encumber the said car or any right, title, or interest therein or attempt, purport or agree to do so;

(iii) that upon the plaintiffs becoming entitled to immediate possession under the hire-purchase agreement he would deliver up possession of the said car to the plaintiffs; and

(iv) that until he exercised his option to become the owner of the said car by paying the total rentals and fulfilling all his other obligations under the said hire-purchase agreement the hirer had no property in the said car and would be only a bailee thereof.

It is the plaintiffs' case that the hirer defaulted in payment of hire-purchase rentals from September 30, 1971 and had not completed payment of all his hire rentals. It is alleged that by Clause 6(a) of the agreement, the plaintiffs became entitled to immediate possession of the said car from October 1, 1971.

On or about June 18, 1973 the plaintiffs repossessed the said car while it was in the possession of the second defendant. It bore the same chasis and engine numbers but with registration number JJ4733. The registration number was changed from JJ1807 to JJ4733 on or about December 1971. On the date the car was re-possessed, the said car was registered in the name of the second defendant with an ownership claim by the first defendant endorsed in the Register.

On or about September 6, 1973 Messrs. Ng Ek Teong wrote to the plaintiffs alleging that the first defendant was the owner of the said car and second defendant the hirer.

It is also the plaintiffs' case that they had no prior knowledge of and at no time consented to the transfer or sale of the said car to either of the defendants or any other person.

It is not in dispute that on or about February 1, 1972, the second defendant purchased the said car from one Tan Ah Lek of Zin Hoe Motor Company, 28, Jalan Sultanah, Batu Pahat. It is also not in dispute that the registration card of JJ4733 did not bear an existing ownership claim by the plaintiffs.

Finance for the purchase of JJ4733 by second defendant was given by first defendant and a hire-purchase agreement was entered into between the first and second defendants on February 1, 1972.

The second defendant has not paid in full his instalments under the hire-purchase agreement and the registration book for JJ4733 shows second defendant as owner of the car and acknowledges a prior ownership of the first defendant.

It is the second defendant's contention that he is a *bona fide* purchaser for value without notice of any form of encumberance at the date and time of purchase whilst the first defendant contend that they had no prior knowledge of any valid existing ownership claim by the plaintiffs at the time they financed the purchase by the second defendant.

It is also the second defendant's contention that when the plaintiffs purportedly re-possessed the said car on or about June 18, 1973 such seizure was wrongful and/or forcible and that it had subjected him to substantial embarrassment.

By reason of the wrongful and/or forcible seizure of the said car and the attendant embarrassment and loss of face to the second defendant and which wrongful act, it was alleged, constituted trespass to the second defendant's goods by the plaintiffs, the second defendant counterclaims stating that he suffers special damage for loss of use of the said car at $10.00 per day from the date of seizure, *i.e.* June 18, 1973 to May 16, 1974 (the date Writ was served — 332 days) in the sum of $3,320.

The first and second defendants say that though they made repeated demands, the plaintiffs refused and/or failed to return the car to the second defendant.

In the alternative the defendants counterclaim a sum of $3,320 as special damages alleging that the plaintiffs converted the said car for their own use and deprived the second defendant of the same.

In the further alternative the second defendant alleges that the plaintiffs' act constituted wrongful detention of his goods and claims a sum of $3,320 as special damages.

It is contended that as a result of the plaintiffs' wrongful act the second defendant refused to pay the

instalments due to the first defendant under the hire-purchase agreement in the sum of $1,400 as from June 18, 1973.

Evidence was adduced by the plaintiffs to show that only five instalments were received by them excluding the deposit and the last payment was made by cheque dated December 10, 1971 on December 20, 1971 for $896.64 (for approximately four payments). The cheque was dishonoured on December 24, 1971. A telegram was sent to the hirer on January 1, 1972 but was not delivered.

A notice of intention to re-possess was sent by the plaintiffs to the hirer. Evidence was also adduced to show that the plaintiffs made many attempts to trace the said car and the hirer. On February 2, 1972 the plaintiffs sent a letter to the hirer but the letter was returned.

The plaintiffs also produced evidence to show, and indeed I am satisfied, that they never sent any letter withdrawing the ownership claim and at no time did they expressly or impliedly consent to the hirer transferring, selling or in any way disposing of the said car.

Miss Chen Kah Leng for the plaintiffs submitted, and in so doing drew court's attention to certain clauses in the plaintiffs' agreement, that the hirer is a mere bailee and the absolute property in the goods remained with the plaintiffs. And after referring to certain provisions in the Hire-Purchase Act, 1967, she also submitted that the plaintiffs' agreement was clearly one for hire with an option to purchase. The hirer has not agreed to buy within the meaning of section 30(2) of the Sales of Goods Ordinance, 1957 (I shall hereinafter call "the Ordinance").

Mr. S. Narayanan counsel for the defendants, on the other hand, submitted that under section 30(2) of the Ordinance, a title passed effectively to the hirer in which event whether by fraud or otherwise he were to sell the car, a proper title passes. Mr. Narayanan cited the two most celebrated cases of *Lee* v. *Butler*[1] and *Helby* v. *Matthews*.[2]

The rule in *Helby* v. *Matthews* and *Lee* v. *Butler, supra* is briefly stated by the learned author in Hire-Purchase Law by Else Mitchell, 4th edition at page 212 as follows —

"The result under the Sale of Goods Act is that if the hirer has agreed to buy the goods the subject of the hire-purchase agreement he can confer a good title on a third person [*Lee* v. *Butler* [1893] 2 Q.B. 318], but if the actual agreement is a hiring under which the hirer is not bound to pay the full price for the goods and has a right to determine the agreement, then he is not a person who has agreed to buy notwithstanding that the agreement confers an option to purchase the goods [*Helby* v. *Matthews* [1895] A.C. 471]."

Section 28(2) of the English Sales of Goods Act is substantially in *pari materia* with section 30(2) of the Ordinance.

After hearing the submissions of both counsel, I feel that the first question that calls for determination is whether, upon the true construction of the plaintiffs' agreement, the hirer has agreed to buy in the sense that he was under an obligation to buy the car from the plaintiffs or the actual agreement was a hiring under which the hirer was not bound to pay the full price for the car and has the right to determine the agreement.

In *United Engineers* v. *Lai Ping Yoon*[3] Gill J. (as he then was) discussed the development and nature of hire-purchase transactions and reference was made to *Lee* v. *Butler, supra* and *Helby* v. *Matthews, supra* and at page 194 second column His Lordship remarked as follows —

"A contract where the property passes at once but the price is payable by instalments is clearly a credit sale. A hire-purchase agreement is more than a simple contract of hire, for it confers upon the hirer an option to purchase the goods. Thus a bailment coupled with an option to buy, as in *Helby* v. *Matthews*, is clearly a hire-purchase agreement. By granting the option, the owner makes an irrevocable offer to sell the goods to the hirer if the conditions laid down in the agreement are fulfilled. On his part, however, the hirer is under no obligation to buy the goods. He may exercise the option, that is to say, he may accept the offer once he has fulfilled the conditions, if he so wishes, but he may also elect to terminate the hiring and return the goods to the owner without buying the goods. He has a power to accept the offer, but is not bound to do so. The importance of the option to purchase lies in the fact that the hirer is unable to pass a good title to a third party, because he is not a person who has bought or agreed to buy the goods. Since the property in the goods remains in the owner who lets them on hire, the retention of the ownership of the goods and the inability of the hirer (except in special circumstances) to pass a good title provide the owner with some measure of security in case the hirer defaults. The hirer, on the other hand, obtains the benefits of a credit transaction in that he receives the possession and use of the goods in advance of the payment of the price, and is enabled to purchase the goods once the price has been paid. (See *Guest* on the Law of Hire-Purchase, pages 10 and 11, paragraphs 23 and 25)."

Miss Chen Kah Leng submitted that though this case was decided before the coming into force of the Act, the remarks of Gill J. are, however, relevant to the present case.

Speaking of the plaintiffs' agreement, Mr. Narayanan, on the other hand, pointed out that the Schedule to the plaintiffs' agreement (page 2 AB) clearly states that "30 Rent Instalments of $229.16 each ..." and in view of this he contended that if anything happens under the plaintiffs' agreement, the hirer is bound to pay the amount, meaning, therefore, that he has agreed to pay this amount.

Miss Chen argued that by Clause (2) of the terms and conditions of the plaintiffs' agreement whereby it is stated that the hirer has agreed to pay the plaintiffs "in consideration of the option to purchase contained in clause 10 the deposits ... stated in the Schedule" and the fact that the hirer has "to pay until the hiring is determined the rent stated in the Schedule", there was no absolute liability on the hirer to pay the 30 rent instalments. Miss Chen proceeded to point out that under Clause (5) of the plaintiffs' agreement, it was agreed that the hirer may at any time terminate the hiring by returning the goods in accordance with section 14 of the Act and it was also a term under the plaintiffs' agreement that the hirer may elect to become the owner of the goods by paying the total rents and fulfilling his other obligations under the agreement or by compliance with section 13 of the Act.

In construing the plaintiffs' agreement, I have given careful consideration to the submissions made by both Mr. Narayanan and Miss Chen Kah Leng.

In the instant case, it is pertinent to note that the agreement between the plaintiffs and the hirer was concluded with particular reference to the Act and it is set out therein a notice to the hirer under section 4 of the Act embodying the Third Schedule of the Act which, *inter alia*, provides that if the hirer is unable to pay his instalments, he is entitled to return the goods to the plaintiffs at the hirer's own expense but if he does that, he will be liable to pay an amount sufficient to cover the loss suffered by the plaintiffs.

In consideration, I form the view that upon the true construction of the plaintiffs' agreement, and I find that the hirer was in effect under no obligation to buy but had an option either to return the car or become its owner by payment in full as in *Helby* v. *Matthews*, *supra*.

In arriving at my finding I have also directed my mind to the provisions of the Act as to their effect on such an agreement. Section 11 of the Act which deals with assignment of rights under hire-purchase agreement seems to acknowledge the right or title of a hirer under a hire-purchase agreement and clearly stipulates that an assignment may only be made with the consent of the owner. The right to complete the agreement at any time in accordance with section 13 is a further acknowledgment of the act of the hirer's right of option to purchase. For these reasons it is untenable to construe that the provisions in the Act concerning such rights should establish that the hirer had agreed to buy.

The learned author in Hire-Purchase Law by Else Mitchell also considered the effect of the English Hire-Purchase Act when applied to certain agreements to sell of the *Lee* v. *Butler* type as well as to pure hire-purchase agreements. At page 215 the learned author had this to say —

"... The Act however gives the hirer a statutory right to return the goods and a question arises as to whether the application of section 28(2) of the Sale of Goods Act, 1923, to agreements of the *Lee* v. *Butler* type is affected. It is submitted that a hirer who has a statutory right to return the goods cannot be a 'person who has agreed to buy' within the meaning of those words in section 28(2) of the Sale of Goods Act.... If this be correct, then in accordance with the principle of *Helby* v. *Matthews* it is not now possible for a hirer under a hire-purchase agreement to which this Act applies to give a good title to a third person under section 28(2) of the Sale of Goods Act, whether the agreement is in form an agreement to buy or a pure hire-purchase agreement...."

In the present case, it is my finding upon the true construction of the plaintiffs' agreement, that it is a type of hire-purchase agreement to which the Act applies such that until the hirer has exercised his option to purchase the car by paying the total rentals and fulfilling all of his obligations under the plaintiffs' agreement, no property in the car passes to the hirer. The hirer is only a bailee, and, consequently, cannot pass a good title to a third party. In the final analysis it is my view that section 30(2) of the Ordinance cannot therefore apply as the title had not effectively passed to the hirer [*Lee* v. *Butler*, *supra*] as the hirer had not bought or agreed to buy within the meaning of section 30(2) of the Ordinance.

Mr. Narayanan also submitted that section 29 of the Ordinance read with section 19 of the Contracts (Malay States) Ordinance, 1950 (for easy reference I reproduce both sections hereunder) shall form a basis upon which title can pass under the law.

Section 29 of the Sale of Goods Ordinance, 1957:

"Where the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 20 of the Contracts (Malay States) Ordinance, 1950, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title."

Section 19 — Contracts (Malay States) Ordinance, 1950:

"When consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused."

Mr. Narayanan argued that if the hirer practised fraud upon the plaintiffs and obtained the release of the ownership claim thereby granting full rights to the hirer, then a voidable title would have arisen. In that event it becomes the duty of the owner to avoid it within time. Whether he did avoid it is a question of fact. Mr. Narayanan also argued that the plaintiffs had full knowledge of the release of ownership claim but no attempts were made to avoid by making a police report or by reporting to the Registrar and Inspector of Motor Vehicles.

With respect I am unable to see any merit in the argument. Section 29 of the Ordinance speaks of sale by person in possession under voidable contract and for purposes of the present case that contract can only mean the plaintiffs' agreement and it follows that the hirer who is the seller for purposes of that section obtained possession of the car. Now, under section 19 of the Contracts (Malay States) Ordinance, 1950, an agreement is a contract voidable when consent to an agreement is caused by coercion, fraud or misrepresentation. The hirer did obtain possession under the plaintiffs' agreement but it was lawfully obtained. In these circumstances I fail to see how this court can sustain the defendants' allegation, if any, that the plaintiffs' agreement was a voidable contract. In the present case there is no evidence that fraud was perpetrated and if at all there was not at the time when the hirer was given possession of the said car but subsequently by the person who had everything to gain by it, not upon the plaintiffs but upon the Registering Authority to cause him to cancel the endorsement of the plaintiffs' ownership claim in the Register. For this reason I form the view that section 29 of the Ordinance would have no application to the present case.

Miss Chen Kah Leng quite rightly pointed out that possession of the registration book was properly secured by the hirer under the plaintiffs' agreement. Even though the hirer was the registered owner of the motor-car, he was only in law, the person who had possession and use of the car and this fact does not necessarily make him the legal owner of the car. Miss Chen's argument is aimed at demolishing the defendants' contention that on the face of the registration card, there is a claim to the ownership of the car which has been cancelled and as such the purchasers subsequent to the hirer were entitled to assume that the hirer was the legal owner at the time he transferred

the car to the next registered owner. The plaintiffs contended that by reason of section 6 of the Road Traffic Ordinance, 1958, the registration card is not a document and does not *prima facie* establish that the person registered as the owner must necessarily be the legal owner. Miss Chen cited the case of *Central Newbury* v. *Unity Finance Ltd.*[4] where

"on November 4, 1955, the plaintiffs' motor saleroom was visited by a personable stranger giving the name of C., who expressed a wish to buy a second-hand Morris car. It was agreed that the plaintiffs should sell the car to a finance company who would let it on hire-purchase to 'C'. 'C'. signed the proposal forms for submission to the finance company, and, contrary to the agreement between the plaintiffs and the finance company, was allowed to take away the car and its registration book, leaving behind in part exchange a Hillman car, which was later found to be on hire-purchase. The Morris car, which the plaintiffs had purchased at an auction, was then registered in the name of one A., who had not signed the book. The book contained a warning that 'The person in whose name a vehicle is registered may or may not be the legal owner of the vehicle'.

On November 7 a personable stranger, giving the name of A., took the car to the third parties' garage and offered it for sale, the purported signature of A being then in the book. The third parties bought the car, and later sold it to the first defendants, a hire-purchase company, who let it to the second defendant. In an action for damages for conversion, the defendants pleaded that the plaintiffs were estopped from denying the authority of C. to sell the car, as they had permitted him to take possesssion of the car and registration book without having made any or any sufficient inquiries:—

Held: (by Hodson and Morris L.J.J., Denning L.J. dissenting), that by entrusting the car to C. together with a document which clearly stated that it did not prove legal ownership, the plaintiffs were not making any representation that C. was entitled to deal with the car as his own, so as to estop them from asserting their own title."

The point raised by Miss Chen, I think, is well taken although Mr. Narayanan did not seem to have vigorously pursued the point in his submission. Be that as it may, there is, however, disclosed from the defence that at the time Tan Ah Lek purchased the said car, the registration card did not bear a valid existing ownership claim of the plaintiffs. The question that Mr. Narayanan posed for the court's determination was whether the title in fact passed. In so doing, he argued that there was a document which purportedly came from the plaintiffs withdrawing the ownership claim. He pointed out that the Registrar and Inspector of Motor Vehicles accepted the document as being sent from the plaintiffs and used it to cancel the ownership claim. He also pointed out that the pleadings did not at any time state there was fraud in the whole transaction. On the evidence it is quite apparent that the Registrar had assumed that the withdrawal letter came from the plaintiffs, but it is equally if not more apparent not only from the testimony of the plaintiffs' witnesses but also from the circumstances surrounding the whole transaction, indeed it seemed highly improbable that it was the plaintiffs who sent the withdrawal letter cancelling the ownership claim even though the evidence should reveal that there was failure on the part of the plaintiffs to bring the matter to the attention of the police and that they had delayed in taking steps to re-possess the car.

At this juncture, it might be appropriate for me to direct my mind to the evidence of Tan Ah Lek. I accept his testimony to the effect that the first and second defendants were *bona fide* purchasers for value without notice but that alone will not, having regard to all the circumstances of the case, be sufficient to invest them with good title as the hirer had none and could not therefore, in law, pass a good title to the purchasers.

It is my considered judgment that the plaintiffs' claim must succeed and I do hereby make an order for the plaintiffs declaring that the said car is the property of the plaintiffs. I also order that costs be paid by the defendants.

It is also my judgment that the counterclaim founded upon grounds of trespass, conversion and wrongful detention must necessarily fail. As for the second defendant's allegation that the plaintiffs wrongfully and/or forcibly seized the said car in circumstances that caused substantial embarrassment and loss of face to him, there is no necessity for me to consider this point as the parties agreed that, dependent upon the finding on the main issue, no evidence would be given by the second defendant to prove his allegation of wrongful and/or forcible seizure and the circumstances under which substantial embarrassment and loss of face had been caused.

For these reasons, I would dismiss the counterclaim with costs.

Plaintiffs' claim allowed.
Counterclaim dismissed.

Solicitors: *Skrine & Co.; Ng Ek Teong & Partners.*

PUBLIC PROSECUTOR v. SYED ABDUL BAHARI SHAHABUDDIN

[R.CrJ. (Abdoolcader J.) June 12, 1975]
[Ipoh — Criminal Revision No. 12 of 1975]

Criminal Law and Procedure — Discharge not amounting to acquittal — No bar to subsequent prosecution — Criminal Procedure Code (F.M.S. Cap. 6) s. 254.

In this case the accused had earlier been charged with an offence under the Prevention of Corruption Act, 1961, but had been discharged not amounting to acquittal. The accused was subsequently charged with the same offence and produced before the Sessions Court, Ipoh, whereupon the President struck off the case.

Held: (1) unless there are good grounds to the contrary a discharge under section 254 of the Criminal Procedure Code should amount to an acquittal. Good grounds would arise where the prosecution is unable to proceed for the time being but can satisfy the court that the temporary impediment is not insurmountable and that it will proceed within a reasonable time;

(2) an order of discharge not amounting to an acquittal is no bar to a second prosecution and therefore the order of striking off the case was unjustified and erroneous in law.

Cases referred to:-

(1) *V. Longworth* v. *Public Prosecutor* Johore Criminal Appeal No. 33 of 1964 (unreported).

(2) *Chu Chee Peng* v. *Public Prosecutor* [1973] 2 M.L.J. 35.

CRIMINAL REVISION.

Shaik Daud bin Haji Mohamed Ismail (Deputy Public Prosecutor) for the applicant.

H. R. Sankey for the respondent.